

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:07CR207
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JEAN LONG-WIRTH,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 14). The Court has also reviewed the Defendant's motion for downward departure (Filing No. 16) and supporting brief (Filing No. 17). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Objections

The plea agreement provides that the parties agree that the Defendant should receive a 2-level role enhancement pursuant to U.S.S.G. § 3B1.1(c). The PSR assesses a 4-level role enhancement under U.S.S.G. § 3B1.1(a). The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the offense level should be increased by 2 levels. The objection is granted.

The Defendant also objects to the last 2 sentences in ¶ 92, which incorrectly state the guideline penalties in the event that the Court honors the plea agreement. The Defendant is correct that, given the 2-level increase to the offense level in ¶ 42, the total

offense level is 13, the Criminal History Category is II, and the resulting sentencing range is 15-21 months. The Court also notes that the resulting fine range is \$3,000 to \$30,000.¹ Therefore, the objection is granted.

Downward Departure

The Defendant moves for a downward departure based on U.S.S.G. §§ 5K2.0 (outside the heartland) and 5H1.6 (family ties and responsibilities) as well as 18 U.S.C. § 3553(a). The motion will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 14) are granted;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

¹The sentencing recommendation incorrectly states that the resulting fine range is \$5,000 to \$50,000.

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
6. The Defendant's motion for downward departure (Filing No. 16) will be heard at sentencing.

DATED this 19th day of November, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge